

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

TRIPLEH PRODUCE LLC

Plaintiff,

v.

LON FRESH, LLC, ET AL.,

Defendants.

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CASE NO. 7:17-CV-00380

**DEFENDANTS' FIRST AMENDED
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW, Defendant LON FRESH, LLC, a Texas limited liability company ("Lon Fresh"), Defendant LUIS MANUEL CAMPOS MASSA ("Luis Campos), Defendant NAHUM TRESS MARINI ("Nahum Tress"), Defendant OSWALDO ESPINOSA ("Oswaldo Espinosa"), and file this their First Amended Original Answer and Affirmative Defenses to Plaintiff's Original Complaint. In support thereof, the Defendants state as follows:

**I.
JURISDICTION AND VENUE**

1. **Answer:** Defendants have insufficient knowledge or information to form a belief about the truth of the allegations of Paragraph 1.
2. **Answer:** Defendants have insufficient knowledge or information to form a belief about the truth of the allegations of Paragraph 2.
3. **Answer:** Defendants have insufficient knowledge or information to form a belief about the truth of the allegations of Paragraph 3.

4. **Answer 4(a):** Defendant Lon Fresh, LLC admits the allegation contained in paragraph 4(a).

Answer 4(b): Defendant Oswaldo Espinosa admits that he is a member and officer of Defendant Lon Fresh, LLC. Defendant Oswaldo Espinosa admits he is in a position to control assets of Defendant Lon Fresh, LLC. Defendant Oswaldo Espinosa admits he resides in Indiana.

Answer 4(c): Defendant Luis Manuel Campos admits that he is a member and officer of Defendant Lon Fresh, LLC. Defendant Luis Manuel Campos admits he is in a position to control assets of Defendant Lon Fresh, LLC. Defendant Luis Manuel Campos admits he occasionally resides in McAllen, TX however his true residence is in Mexico.

Answer 4(d): Defendant Nahum Tress Marini admits that he is a member and officer of Defendant Lon Fresh, LLC. Defendant Luis Manuel Campos admits he is in a position to control assets of Defendant Lon Fresh, LLC. Defendant Nahum Tress Marini admits he occasionally resides in McAllen, TX however his true residence is in Mexico.

5. **Answer:** Defendants admit the factual allegation contained in Paragraph 5.

6. **Answer:** Defendants admit the factual allegation contained in Paragraph 6.

7. **Answer:** Defendants deny that the Court has Jurisdiction over this matter. Defendant Lon Fresh, LLC has never transacted any business with Plaintiff. There is no real legal controversy between the Defendants and Plaintiff.

8. **Answer:** Defendants deny that the Court has Venue over this matter. Defendant Lon Fresh, LLC has never transacted any business with Plaintiff, as such no events or omissions occurred in this district and the legal claims in this case are improper.

FACTUAL ALLEGATIONS

9. **Answer:** Denied. Plaintiff sold and delivered produce to a separate and distinct Company based out of Indiana: “Lon Fresh Produce, LLC”. Until June 16, 2017, “Lon Fresh Produce, LLC”, the Indiana Company, and Lon Fresh, LLC which is based out of McAllen, TX, did have the same owners, Luis Manuel Campos, Nahum Tress Marini and Oswaldo Espinosa. However, the Companies have always been distinct and separate legal entities. There has never been any intermingling of funds or accounts between the two entities. In fact, the Indiana company is considered a customer of the McAllen Company. The Companies had distinct operations, vendors and customers. “Lon Fresh Produce, LLC” has been managed and operated by Defendant Oswaldo Espinosa. At no point did the McAllen TX Lon Fresh, LLC purchase any produce from Plaintiff. The invoices and bills of lading and receipts contained in Exhibit A to Plaintiff’s Original Complaint indicate as much, as they all indicate “Lon Fresh Produce, LLC” based out of Indiana.

10. **Answer:** Defendants deny Paragraph 10.

11. **Answer:** Defendants deny Paragraph 11.

12. **Answer:** Defendants deny Paragraph 12.

13. **Answer:** Defendants deny Paragraph 13.

14. **Answer:** Defendants admit to the extent the allegation relates to Lon Fresh, LLC, and deny to the extent such allegation refers to the Indiana company “Lon Fresh Produce, LLC”.

COUNT I ENFORCEMENT OF THE PACA TRUST ALL DEFENDANTS

15. **Answer:** Defendants deny the allegations of Paragraph 15.

16. **Answer:** Defendants deny the allegations of Paragraph 16.

17. **Answer:** Defendants deny the allegations of Paragraph 17.

- 18. **Answer:** Defendants deny the allegations of Paragraph 18.
- 19. **Answer:** Defendants deny the allegations of Paragraph 19.
- 20. **Answer:** Defendants deny the allegations of Paragraph 20.
- 21. **Answer:** Defendants deny the allegations of Paragraph 21.

COUNT II
PACA VIOLATION: FAILURE TO PAY PROMPTLY
ALL DEFENDANTS

- 22. **Answer:** Defendants deny the allegations of Paragraph 22.
- 23. **Answer:** Defendants deny the allegations of Paragraph 23.
- 24. **Answer:** Defendants deny the allegations of Paragraph 24.
- 25. **Answer:** Defendants deny the allegations of Paragraph 25.
- 26. **Answer:** Defendants deny the allegations of Paragraph 26.

COUNT III
PACA VIOLATION: FAILURE TO MAINTAIN TRUST
ALL DEFENDANTS

- 27. **Answer:** Defendants deny the allegations of Paragraph 27.
- 28. **Answer:** Defendants deny the allegations of Paragraph 28.
- 29. **Answer:** Defendants deny the allegations of Paragraph 29.
- 30. **Answer:** Defendants deny the allegations of Paragraph 30.
- 31. **Answer:** Defendants deny the allegations of Paragraph 31.
- 32. **Answer:** Defendants deny the allegations of Paragraph 32.

**COUNT IV
BREACH OF CONTRACT
LON FRESH**

- 33. **Answer:** Defendant denies the allegations of Paragraph 33.
- 34. **Answer:** Defendant denies the allegations of Paragraph 34.
- 35. **Answer:** Defendant denies the allegations of Paragraph 35.
- 36. **Answer:** Defendant denies the allegations of Paragraph 36.
- 37. **Answer:** Defendant denies the allegations of Paragraph 37.
- 38. **Answer:** Defendant denies the allegations of Paragraph 38.

**COUNT V
BREACH OF FIDUCIARY DUTY
OZZY ESPINOSA**

- 39. **Answer:** Defendant denies the allegations of Paragraph 39.
- 40. **Answer:** Defendant admits the allegations of Paragraph 40.
- 41. **Answer:** Defendant admits the allegations of Paragraph 41.
- 42. **Answer:** Defendant admits the allegations of Paragraph 42.
- 43. **Answer:** Defendant admits the allegations of Paragraph 43.
- 44. **Answer:** Defendant admits the allegations of Paragraph 44.
- 45. **Answer:** Defendant admits the allegations of Paragraph 45.
- 46. **Answer:** Defendant admits the allegations of Paragraph 46.
- 47. **Answer:** Defendant denies the allegations of Paragraph 47.
- 48. **Answer:** Defendant denies the allegations of Paragraph 48.
- 49. **Answer:** Defendant denies the allegations of Paragraph 49.
- 50. **Answer:** Defendant denies the allegations of Paragraph 50.

51. **Answer:** Defendant denies the allegations of Paragraph 51.

52. **Answer:** Defendant denies the allegations of Paragraph 52.

53. **Answer:** Defendant denies the allegations of Paragraph 53.

54. **Answer:** Defendant denies the allegations of Paragraph 54.

55. **Answer:** Defendant denies the allegations of Paragraph 55. Defendant Oswaldo Espinosa was in charge of the Operations of Lon Fresh Produce, LLC, an Indiana company. The transactions of which Plaintiff complains of were entered with Lon Fresh Produce, LLC, and had nothing to do with Lon Fresh, LLC, the McAllen, TX company. If Defendant Oswaldo Espinosa is liable to Plaintiff for any sums, it would be as a consequence of the operations of Lon Fresh Produce, LLC, the Indiana company.

**COUNT VI
BREACH OF FIDUCIARY
LUIS MANUEL CAMPOS MASSA**

56. **Answer:** Defendant denies the allegations of Paragraph 56.

57. **Answer:** Defendant admits the allegations of Paragraph 57.

58. **Answer:** Defendant admits the allegations of Paragraph 58.

59. **Answer:** Defendant admits the allegations of Paragraph 59.

60. **Answer:** Defendant admits the allegations of Paragraph 60.

61. **Answer:** Defendant admits the allegations of Paragraph 61.

62. **Answer:** Defendant admits the allegations of Paragraph 62.

63. **Answer:** Defendant admits the allegations of Paragraph 63.

64. **Answer:** Defendant denies the allegations of Paragraph 64.

65. **Answer:** Defendant admits the allegations of Paragraph 65.

66. **Answer:** Defendant denies the allegations of Paragraph 66.

67. **Answer:** Defendant denies the allegations of Paragraph 67.
68. **Answer:** Defendant denies the allegations of Paragraph 68.
69. **Answer:** Defendant denies the allegations of Paragraph 69.
70. **Answer:** Defendant denies the allegations of Paragraph 70.
71. **Answer:** Defendant denies the allegations of Paragraph 71.
72. **Answer:** Defendant denies the allegations of Paragraph 72.

**COUNT VII
BREACH OF FIDUCIARY
NAHUM TRESS MARINI**

73. **Answer:** Defendant denies the allegations of Paragraph 73.
74. **Answer:** Defendant admits the allegations of Paragraph 74.
75. **Answer:** Defendant admits the allegations of Paragraph 75.
76. **Answer:** Defendant admits the allegations of Paragraph 76.
77. **Answer:** Defendant admits the allegations of Paragraph 77.
78. **Answer:** Defendant admits the allegations of Paragraph 78.
79. **Answer:** Defendant admits the allegations of Paragraph 79.
80. **Answer:** Defendant admits the allegations of Paragraph 80.
81. **Answer:** Defendant denies the allegations of Paragraph 81.
82. **Answer:** Defendant admits the allegations of Paragraph 82.
83. **Answer:** Defendant denies the allegations of Paragraph 83.
84. **Answer:** Defendant denies the allegations of Paragraph 84.
85. **Answer:** Defendant denies the allegations of Paragraph 85.
86. **Answer:** Defendant denies the allegations of Paragraph 86.
87. **Answer:** Defendant denies the allegations of Paragraph 87.

88. **Answer:** Defendant denies the allegations of Paragraph 88.
89. **Answer:** Defendant denies the allegations of Paragraph 89.

COUNT VIII
BREACH OF FIDUCIARY DUTY
INTEREST AND ATTORNEY'S FEES

90. **Answer:** Defendants deny the allegations of Paragraph 90.
91. **Answer:** Defendants deny the allegations of Paragraph 91.
92. **Answer:** Defendants deny the allegations of Paragraph 92.
93. **Answer:** Defendants deny the allegations of Paragraph 93.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action upon which the requested relief may be granted for or against Defendants.
2. Failure of conditions precedent.
3. No contract between Plaintiff and the Defendants.
4. Failure to comply with the procedures set out in PACA.
5. Failure to provide proper notice of PACA trust to Defendants.
6. No attorney fees are due under contract or allowed by law.

DATED: October 26, 2017.

Respectfully Submitted,

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By /s/ J. Francisco Tinoco
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***ATTORNEY IN CHARGE
FOR DEFENDANTS LON FRESH, LLC,
LUIS M. CAMPOS MASSA,
NAHUM TRESS MARINI, AND
OSWALDO ESPINOSA***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 26, 2017, I Electronically filed the foregoing with the document with the Clerk of the Court using the CM/ECF filing system. I also certify that the foregoing document is being served this date on all counsel of record via transmission of Notices of Electronic Filing generated by the CM/ECF system.

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/s/ J. Francisco Tinoco
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